In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 888

LOCAL 107, ETC., affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

A. DUIE PYLE, INCORPORATED, ET AL., and NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The collective bargaining agreement between the petitioner unions and a group of motor common carriers contains a clause providing that, where the carrier hires or leases the equipment of "owner-oper-

ators" and "fleet-operators," [1] the equipment shall be operated by an "employee" of the carrier who "shall be paid pursuant to the terms of this Agreement," and the carrier shall have "the right to control the manner, means and details of, and by which the owner-operator performs his services, as well as the ends to be accomplished" (Pet. App. 23a). The effect of this clause is to permit the carrier to do business only with owner-operators and fleet-operators whose drivers, while performing services for the carrier, are employees of the carrier and thus subject to the provision in the union's collective agreement with the carrier requiring union membership as a condition of continued employment (see Pet. App. 36a). The question presented is whether this clause is covered by the prohibition in Section 8(e) of the Act against a labor organization and an employer entering into agreements by which the latter agrees "to cease doing business with any other person" (Pet. App. 55a).

The Board found that the basic purpose of the clause was "to protect unit work and standards against erosion from subcontracting that might allow the same work to be performed under terms and conditions of employment less favorable than those prescribed in the Union's collective-bargaining agree-

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[1] An owner-operator owns a truck-tractor, or a tractor-trailer combination, leases this equipment to a carrier, and drives the vehicle himself. A fleet-operator owns one or more such vehicles and leases them to a carrier either with or without drivers. (Pet. App. 18a).

ment," and that the clause had "a legitimate primary object and [was] not aimed at achieving secondary objectives tied to union interests outside the unit that Section 8(e) is designed to prevent" (Pet. App. 33a-34a).[2] The court of appeals ruled that, on their face, the requirements in the clause "are 'secondary' in their purpose as well as their result," since they "do not require a carrier to put an end to subcontracting, but only to terminate it as to subcontractees who refuse to become members of the union" (Pet. App. 8a-9a). The court further held that the evidence in the record was insufficient to show that the clause did not have a secondary object (see Pet. App. 10a).[3] Accordingly, it set aside the Board's dismissal of the unfair labor practice complaint *(ibid.)*.

Although the Board believes that the court of appeals erred in holding that the clause had a secondary objective and thus violated Section 8(e) of the Act, it did not file a petition for a writ of certiorari. The Board believes that, in view of the stipulated rec-

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[2] See *National Woodwork Manufacturers Ass'n.* v. *National Labor Relations Board*, 386 U.S. 612; *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283.

[3] The court noted that, since "the Board decided the present case on a stipulation of facts, the record is neither as complete nor as satisfactory as it might be" (Pet. App. 8a).

ord, this would not be an appropriate case for seeking further review of this issue.

Respectfully submitted.

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